

**United States District Court**  
**EASTERN DISTRICT OF TEXAS**  
**SHERMAN DIVISION**

|                                   |   |                              |
|-----------------------------------|---|------------------------------|
| OXYSURE THERAPEUTICS, INC., A/K/A | § |                              |
| OXYSURE SYSTEMS, INC.             | § |                              |
|                                   | § | Civil Action No. 4:15-CV-821 |
| v.                                | § | (Judge Mazzant/Judge Nowak)  |
|                                   | § |                              |
| GEMINI MASTER FUND, LTD., ET AL.  | § |                              |

**MEMORANDUM ADOPTING REPORT AND  
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On July 8, 2016, the report of the Magistrate Judge (Dkt. #16) was entered containing proposed findings of fact and recommendations that Defendants' Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a), or alternatively, to Dismiss the Complaint Pursuant to FRCP 12(b)(3) (Dkt. #5) be granted in part and denied in part.

Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court.

It is, therefore, **ORDERED** that Defendants' Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a), or alternatively, to Dismiss the Complaint Pursuant to FRCP 12(b)(3) (Dkt. #5) is **GRANTED IN PART AND DENIED IN PART**.

It is further **ORDERED** that Plaintiff's claims for breach of duty of good faith, declaratory relief, and reformation of the Purchase Agreement be transferred to the Southern

District of New York and consolidated with the suit pending in that jurisdiction (1:15-CV-9546).<sup>1</sup>

It is further **ORDERED** that Plaintiff's claim for equitable rescission of the Purchase Agreement pursuant to which the Warrants and Notes are issued remains before this Court.

**IT IS SO ORDERED.**

**SIGNED this 28th day of July, 2016.**

A handwritten signature in black ink, reading "Amos Mazzant", is written over a horizontal line.

AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Notes, Warrants, Purchase Agreement and/or Agreement refer to those terms as defined in the Magistrate Judge's report and recommendation (Dkt. #16 at 2).